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No. 81-469

In the Supreme Court of the United States

OCTOBER TERM, 1982

WILLIAM C. BUSH, PETITIONER

v.

WILLIAM R. LUCAS

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MOTION TO FILE SUPPLEMENTAL BRIEF AND SUPPLEMENTAL BRIEF FOR THE RESPONDENT

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Pursuant to Rule 35.5 of the Rules of this Court, the Solicitor General, on behalf of respondent, respectfully moves for leave to file a supplemental brief to bring to the Court's attention the recent decision of the United States Court of Appeals for the Sixth Circuit in *Braun* v. *United States*, No. 81-1411 (May 27, 1983).[1]

Braun, like petitioner here, was a government employee who alleged that his supervisors retaliated against him for criticizing alleged government mismanagement. Specifically, Braun claimed that he was wrongfully denied a promotion and subjected to other unfavorable actions. In addition to suing the United States, Braun, like petitioner,

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[1] We have lodged ten copies of the opinion in *Braun* with the Clerk of this Court and have served a copy on counsel for petitioner.

sought damages from his supervisors in their individual capacities, asserting that he had a cause of action under the First Amendment by virtue of *Bivens* v. *Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971).

The Sixth Circuit, explicitly following the decision of the court of appeals in the present case, affirmed the district court's dismissal of the complaint, holding that Braun did "not state a *Bivens* cause of action * * * because there are alternative remedies available and because of the special relationship of [Braun] as a federal employee" to the government. Slip op. 9. The Sixth Circuit had not previously addressed this issue, and its decision continues the trend we noted in our principal brief (at 17 and note 6): no circuit has resolved the question presented by this case adversely to our position.[2]

For these reasons and the reasons stated in our principal brief, the judgment of the court of appeals should be affirmed.

Respectfully submitted.

REX E. LEE
Solicitor General

JUNE 1983

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[2]The alternative remedies available to Braun apparently included remedies under the Civil Service Reform Act of 1978, 5 U.S.C. (Supp. V) 1101 *et seq.* See slip op. 2, 4-7. Because this Act was passed after the actions of which petitioner complains, its remedies were not available to petitioner; but as we explained in our principal brief (at 29-34), the remedies that existed before 1978 were also sufficient to preclude a *Bivens* action.

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